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Policy Update

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Ms. Betty Lou Edwards, Editor

THE ARMY CIVIL WORKS LEGISLATIVE PROGRAM FOR 1998 (THE WATER RESOURCES DEVELOPMENT ACT OF 1998)

The draft Army Civil Works Legislative Program for 1998 (WRDA 98) has been sent to the Acting Assistant Secretary of the Army for Civil Works (AASA(CW)). The AASA(CW) plans to forward the legislative program to the Office of Management and Budget (OMB) by the end of February 1998. After OMB gives clearance for the Administration, the goal is to forward the program to the Congress by the end of March 1998. The outlook for passage of WRDA 98 is good. The time frame is unclear at this time, but we are hoping for a bill by late summer or early fall.

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POLICY GUIDANCE LETTER NO. 46, USE OF MITIGATION BANKS FOR U.S. ARMY CORPS OF ENGINEERS CIVIL WORKS PROJECTS

The need for policy guidance on the use of mitigation banks for Civil Works projects was one of the issues identified at the May 1997 National Workshop on Ecosystem Restoration Policy and Implementation Issues. Interagency Federal policy on the use and operation of mitigation banks was published in the Federal Register on November 28, 1995. Policy Guidance Letter (PGL) No. 46 provides guidance on the use of banks in Civil Works projects. The guidance indicates that, with limited exceptions, Civil Works funds will not be used to create mitigation banks. However, credits from mitigation banks established by others may be used to compensate for the environmental impacts from Corps Civil Works projects. A draft of PGL 46 was sent to the Major Subordinate Commanders for review and comment on November 5, 1997. The PGL has been revised based on comments received and is being circulated for final HQ review. A draft of the PGL can be found on the

Policy Division Home Page at

<http://www.usace.army.mil/inet/functions/cw/cecwa/cecwa.htm>.

POC: Rich Worthington, CECW-AA, 202-761-1184

POLICY GUIDANCE LETTER NO. 47, COST SHARING FOR DREDGED MATERIAL DISPOSAL FACILITIES AND DREDGED MATERIAL DISPOSAL FACILITY PARTNERSHIPS

Policy Guidance Letter (PGL) No. 47 provides guidance for implementing Sections 201 and 217 of the Water Resources Development Act of 1996 (WRDA 96). Section 201 of WRDA 96 has addressed the lack of consistent cost sharing for dredged material disposal facilities by amending Sections 101 and 214 of the Water Resources Development Act of 1986 (WRDA 86) to establish cost sharing for construction of all disposal facilities associated with Federal navigation projects, including disposal facilities for Federal project maintenance. Section 201 applies to construction and operation and maintenance of any dredged material disposal facility for which a contract for construction was not awarded on or before October 12, 1996. The most important provisions of Section 201 are:

- a. The costs of constructing land-based and aquatic dredged material disposal facilities associated with the construction, operation, and maintenance of all Federal navigation harbors and inland harbors shall be considered costs of constructing a general navigation feature (GNF) of the project and shall be shared in accordance with the procedures in Section 101(a) of WRDA 86.
- b. The Federal share of the costs of operation and maintenance of disposal facilities will be 100 percent except for disposal facilities for projects in excess of 45 feet where the non-Federal sponsor will share in 50

percent of the incremental operation and maintenance costs.

c. The Federal share of construction of dredged material disposal facilities associated with the operation and maintenance of Federal harbor projects, Federal dredged material disposal facility operation and maintenance costs, Federal costs of dredging and disposal of contaminated sediments that are in or that affect the maintenance of a Federal navigation channel, and Federal costs of mitigation for storm damage and environmental impacts resulting from Federal maintenance activity are eligible operation and maintenance costs under Section 214 of WRDA 86 and are reimbursed from the Harbor Maintenance Trust Fund.

PGL 47 provides guidance on the key issues in implementing Section 201, including the definition of land based dredged material disposal facilities, construction of disposal facilities versus operation and maintenance activities for disposal areas, and cost sharing guidance for various scenarios.

Section 217 of WRDA 96 addresses dredged material disposal facility partnerships. PGL 47 provides guidance for implementing the basic provisions of the section which follow:

a. Additional Capacity. Provides that the Secretary of the Army at the request of a non-Federal interest may provide additional capacity at a dredged material disposal facility being constructed by the Secretary if the non-Federal interest pays during the period of construction all costs associated with the construction of the additional capacity.

b. Non-Federal Use of Disposal Facilities. Provides that the Secretary of the Army may permit the use of any dredged material disposal facility managed by the Secretary by a non-Federal interest if such use will not reduce the availability of the facility for project purposes and may impose fees to recover capital, operation, and maintenance costs associated with such use.

c. Public-Private Partnerships. Provides that the Secretary of the Army may implement opportunities for public-private partnerships in the design, construction, management, or operation of dredged material disposal facilities in connection with construction or maintenance of Federal navigation projects.

In addition to providing policy guidance, PGL 47 outlines procedures for development, approval, and

funding of dredged material disposal facilities. The latest draft of PGL 47 can be found on the Policy Division Home Page. The PGL has completed a Headquarters review, and the PGL will be issued as soon as concurrence is obtained from the Office of the Assistant Secretary of the Army (Civil Works).

POC: Rich Worthington, CECW-AA, 202-761-1184

POLICY GUIDANCE LETTER NO. 48, COST SHARING FOR SPECIFICALLY AUTHORIZED ENVIRONMENTAL PROJECTS

Policy Guidance Letter (PGL) No. 48 was issued on July 21, 1997, and can be found on the Policy Division Home Page. It implements Section 210 of the Water Resources Development Act of 1996 (WRDA 96), which established the cost sharing for ecosystem (environmental) protection and restoration projects by amending Section 103(c) of the Water Resources Development Act of 1986 (WRDA 86) to add environmental protection and restoration to the list of project purposes and establish the non-Federal share as 35 percent. Section 210 also adds a qualification to the 35 percent non-Federal share indicating, "... that nothing in this paragraph shall affect or limit the applicability of section 906." PGL 48 provides the details on cost sharing for specifically authorized ecosystem restoration projects authorized after October 12, 1996. It also clarifies that projects for ecosystem (environmental) protection and restoration are not enhancement projects and will be recommended to Congress in accordance with the 65 percent Federal and 35 percent non-Federal cost sharing established by Section 210 and not in accordance with the variable cost sharing for fish and wildlife enhancement in Section 906(e) of WRDA 86.

POC: Rich Worthington, CECW-AA, 202-761-1184

DRAFT POLICY GUIDANCE LETTER NO. 49, SECTION 312 OF THE WATER RESOURCES DEVELOPMENT ACT OF 1990, ENVIRONMENTAL DREDGING, AS AMENDED BY SECTION 205 OF THE WATER RESOURCES DEVELOPMENT ACT OF 1996

Policy Guidance Letter (PGL) No. 49 implements Section 205 of the Water Resources Development Act of 1996 (WRDA 96), which amends Section 312 of the Water Resources Development Act of 1990 (WRDA 90). There were two distinct authorities in Section 312. Section 312(a) provided for removal of contaminated sediments outside the boundaries of and adjacent to a Federal navigation project as part of the

operation and maintenance of the project. Section 312(b) provided for removal of contaminated sediments for the purpose of environmental enhancement and water quality improvement in navigable water of the United States if such removal was requested by a non-Federal sponsor and the sponsor agreed to pay 50 percent of the cost of removal and 100 percent of the cost of disposal. Section 312 had an annual authorization appropriations limit of \$10 million and a 5-year effective life. The authorities of Section 312 expired on November 29, 1995. At the time of its expiration, no environmental dredging projects had been initiated under Section 312 authority.

Section 205 reestablished and amended the authorities of Section 312 by:

- (1) providing for removal and remediation of contaminated sediments under the authorities of Section 312(a) and Section 312(b);
- (2) raising the annual appropriation authorization from \$10 million to \$20 million;
- (3) deleting the termination date for the authorities of Section 312; and
- (4) giving priority to work at five locations.

PGL 49 supersedes PGL 35, which was the previous guidance on Section 312 of WRDA 90, and presents a fundamental change in policy on implementation of Section 312(b), as amended. Under the policy in effect prior to WRDA 96, Civil Works funds were not to be budgeted for the implementation of Section 312(b). Under the current policy, a project for removal and remediation of contaminated sediments from the navigable waters of the United States for the purpose of environmental enhancement and water quality improvement may be considered for implementation as a Federal project.

PGL 49 provides guidance on both policies and implementation procedures for both Section 312(a) and (b) as amended by Section 205 of WRDA 96. The PGL was signed on January 28, 1998. The PGL can be found on the Policy Division Home Page.

POC: Rich Worthington, CECW-AA, 202-761-1184

POLICY GUIDANCE LETTER NO. 52, FLOODPLAIN MANAGEMENT PLANS

Policy Guidance Letter (PGL) No. 52 provides guidance for implementing Section 202(c) of the Water Resources Development Act of 1996, which requires non-Federal interests to prepare a floodplain management plan designed to reduce the impacts of

future flood events in the project area within one year of signing a project cooperation agreement and to implement the plan not later than one year after completion of construction of the project. Section 202(c) requires the Corps to provide guidelines to non-Federal interests for the development and implementation of these floodplain management plans. The guidelines are provided in this PGL.

In addition, this guidance encourages the development of the floodplain management plan by the non-Federal sponsor during the feasibility study by promoting a broader look at gathering information that will be useful to the non-Federal sponsor and which is consistent with the Principles and Guidelines and existing Corps planning guidance. Information developed in this manner is cost shared 50/50 and provides the Corps an opportunity to provide technical assistance. Any additional assistance from the Corps after the feasibility study is at 100 percent non-Federal cost.

POC: Jan Rasgus, CECW-AA, 202-761-0121

POLICY GUIDANCE LETTER NO. 53, IMPLEMENTATION OF SECTION 211 OF THE WATER RESOURCES DEVELOPMENT ACT OF 1996

Policy Guidance Letter (PGL) No. 53 provides guidance for implementing Section 211 of the Water Resources Development Act of 1996, which provides authority for non-Federal interests to undertake the design and construction of Federally authorized flood control projects without Federal funding and to be eligible to be reimbursed an amount equal to the estimate of the Federal share, without interest (or inflation), of the design and construction cost of the project or separable element, thereof.

Reimbursement for projects undertaken pursuant to Section 211 is contingent upon approval by the Secretary of the Army of the plans for construction and the Secretary's determination that the project or separable element, thereof, is economically justified and environmentally acceptable. This approval must be obtained after project authorization and prior to initiation of construction of the work. All projects pursued under the authority of Section 211 must be planned, designed, and constructed in accord with appropriate Federal laws and criteria, standards, and policies, including the appropriate National Environmental Policy Act (NEPA) documentation, and construction must comply with all applicable Federal and state laws and regulations.

There are two reimbursement provisions in Section 211. Section 211(e)(1) is a generic provision that applies to any authorized flood control project or separable element, thereof. Reimbursement under this provision cannot occur until the construction of the flood control project or separable element is complete. Reimbursements under this provision are subject to Appropriation Acts. Section 211(e)(2)(A) is a special reimbursement provision for those projects specifically named in Section 211(f). Reimbursements under this provision must be contained in an Appropriations Act; i.e., earmarked in law.

POC: Jan Rasgus, CECW-AA, 202-761-0121

POLICY GUIDANCE ON SPONSOR CREDIT FOR PED COORDINATION TEAM ACTIVITIES AND PCA NEGOTIATIONS

The Policy Guidance Branch (CECW-AG) has completed Policy Guidance Letter (PGL) No. 55. The policy guidance letter clarifies the policy for credit for non-Federal sponsors' costs of Preconstruction Engineering and Design (PED) Coordination Team activities and Project Cooperation Agreement (PCA) negotiations.

For projects with PED agreements -- Credit for PED Coordination Team activities will be provided to non-Federal sponsors. Credit will be against the 25 percent cash payment for PED by non-Federal sponsors that have entered into a PED agreement.

For projects without PED agreements -- Credit for PED Coordination Team activities will be provided when a PED Coordination Team has been established, when non-Federal sponsor coordination activities that are eligible to receive credit have occurred after the establishment of the PED Coordination Team, and only for PED Coordination Team activities after October 1, 1996.

PED Coordination Team activities eligible for credit are activities involving the oversight of issues related to PED, including scheduling of report and work products; plans and specifications; anticipated real property and relocation requirements for construction or implementation of the project; contract awards and modifications; contract costs; the Government's cost projections; anticipated requirements and needed capabilities for performance of operation, maintenance, repair, replacement and rehabilitation of the project; and other related matters. Eligibility of expenses for credit will depend upon documentation that the expenses were incurred during the PED period in

accordance with the audit and other financial standards established in model PCA language.

The policy that no credit be given to sponsors for their costs to negotiate the PCA remains in effect.

Project managers should discuss the implications of this policy with non-Federal sponsors that have not executed PED agreements at the earliest possible date. PED Coordination Teams may be established formally and the sponsor should be informed of accounting procedures necessary to support the credit. Project managers and the non-Federal sponsor shall follow the same procedures as in Article III of the model PED agreement for establishing the PED Coordination Team.

Policy Guidance Letter No. 55 has been posted on the Policy Division Home Page.

POC: Alan Lauwaert, CECW-AG, 202-761-0125

POLICY GUIDANCE ON NEGOTIATION OF THE PED AGREEMENT

The Policy Guidance Branch (CECW-AG) has distributed a policy guidance memorandum, dated November 12, 1997, subject: Negotiation of the Preconstruction Engineering and Design (PED) Agreement. The policy guidance memorandum clarifies the policy for Federal funding for negotiation of the PED agreement.

Federal costs to negotiate a PED agreement with a non-Federal sponsor are included in the PED costs of the project. These negotiation costs may be financed initially by the Federal government and shall be included in total PED costs against which the non-Federal sponsor's 25 percent is applied. For projects in the feasibility phase and subject to the availability of PED funds, districts may establish an account for negotiation of the PED agreement within three months prior to the scheduled completion of the division commander's public notice and in an amount not to exceed \$50,000. The actual costs of negotiation will be included in PED costs and Total Project Cost. Expenditures in excess of \$50,000 for PED are not permitted without prior approval until the PED agreement is executed. This is applicable also for other post-authorization decision documents, such as Limited Reevaluation Reports (LLR's) or General Reevaluation Reports (GRR's) where design has not been started prior to October 1, 1996.

When PED funds are expended prior to the division

commander's public notice, a deviation from the approved model PED agreement may be required.

For Congressional adds (General Investigation funded) that require project cost sharing and PED where a feasibility study has not been undertaken, the same principles shall apply, and guidance as to the amount of negotiation costs and costs to develop a Project Study Plan (PSP) appropriate to the project shall be provided in the annual video teleconference (VTC).

For Congressional adds (Construction, General funded) that require project cost sharing and PED-like activities where a feasibility study has not been undertaken, the same principles shall apply, and guidance as to the amount of negotiation costs and costs to develop a Project Management Plan (PMP) appropriate to the project shall be provided in the annual VTC.

The policy guidance memorandum has been posted on the Policy Division Home Page.

POC: Alan Lauwaert, CECW-AG, 202-761-0125

REVISION OF ER 1165-2-30

Revision of Engineer Regulation (ER) 1165-2-30, Acceptance and Return of Required, Contributed or Advanced Funds, has been completed. This ER has been revised to provide a limited delegation of authority to district commanders for certain actions under the Operations and Maintenance Program, along with a single model Memorandum of Agreement (MOA) (vs. two samples of actual MOA's). By memorandum for the Chief of Engineers, dated November 3, 1997, subject: Acceptance and Return of Required, Contributed or Advanced Funds, the Acting Assistant Secretary of the Army for Civil Works (AASA(CW)) delegated authority for District Commanders to enter into the model MOA provided in Appendix A of the revised ER without deviation. District commanders may accept contributed funds in the amount of \$2 million or less from non-Federal interests for the purpose of dredging non-Federal berthing areas and channels/slips or to dispose of dredged material in a beneficial manner (i.e., non-Federal beach nourishment or wetland development) under the following conditions:

- The contributed funds are not to be used to implement or maintain any portion of a Federal project for which a Federal contribution is authorized, and
- The proposed non-Federal work will be accomplished along with the maintenance dredging of

the Federal navigation project associated with the proposed non-Federal work.

The revised ER, dated December 31, 1997, was sent to the printer on January 20, 1998. Pending receipt of the printed ER and formal posting of the ER along with other corps publications on the HQUSACE INET, a copy may be accessed from the Policy Guidance Branch Page at <http://www.usace.army.mil/inet/functions/cw/cecwa/cwag.htm>

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ESTABLISHMENT OF THE OFFICE OF CONGRESSIONAL AFFAIRS

Effective January 20, 1998, the Chief of Engineers has established the Office of Congressional Affairs (OCA) within his Executive Office. The OCA will be the single point of contact between the Chief and Members of Congress. A key objective of the OCA is to integrate and share information about Members of Congress and key congressional issues, including significant, noteworthy congressional activities of Civil Works, Military Programs, and the Support for Others Program, throughout the Command and with appropriate elements of Army. This action does not change any of the roles and responsibilities of the Legislative Initiatives Branch in the Policy Division or the Programs Management Division related to Civil Works matters and interface with Members of Congress and their personal or committee staffs.

OCA staff will consist of a Chief, four congressional liaison action officers, and a secretary. Recruiting for a number of these positions will take place in the coming months. In the interim, six individuals currently are working in OCA. The OCA will use the office symbol CECS-C and can be reached at 202-761-1040. Mr. James P. Rausch, Chief of the Legislative Initiatives Branch (CECW-AL), has been temporarily detailed as Acting Chief, OCA, until such time as a permanent Chief can be selected. In his absence, Mr. Gary T. Campbell is currently serving as Acting Chief, CECW-AL.

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THE VALUE ADDED TO COASTAL RESTORATION PROJECTS BY THE COASTAL AMERICA PROCESS

Background, Purposes, and Goals of Coastal America

The Coastal America partnership was formally established by a Memorandum of Understanding (MOU) in April of 1992. Eight Federal agencies -- the Departments of Agriculture, Army, Air Force, Commerce, Interior, Transportation, and Navy, and the Environmental Protection Agency (EPA) -- and the President's Council on Environmental Quality signed the original MOU. This MOU describes the operational framework, goals, and objectives for Coastal America and the process for coordinating and implementing project activities. The partners pledged to: protect, preserve, and restore the Nation's coastal ecosystems through existing Federal capabilities and authorities; facilitate collaboration and cooperation in the stewardship of coastal living resources by working in partnership with other Federal programs; integrate Federal actions with those of state, local, and non-governmental efforts; and provide a framework for action that effectively focuses agency expertise and resources on jointly identified problems to produce demonstrable environmental and programmatic results that may serve as models for effective management of coastal living resources. In July of 1994, the MOU was modified to add an additional 3 departmental agencies to the partnership -- the Departments of Housing and Urban Development, Defense, and Energy -- bringing the total to 11 Federal agencies and the Executive Office of the President.

Coastal America's projects are typically funded by a minimum of 3 Federal agencies of the 11 partnership agencies and by state, local and non-governmental partners. To date, over 220 Coastal America projects have been undertaken using various combinations of agency programmatic funding, in-kind transfers of technical assistance, volunteer labor, and cost sharing with state and non-governmental agencies. Additionally, over 300 non-Federal agencies have contributed either cash or in-kind services to these Coastal America projects and activities.

The Value Added Through the Coastal America Process

In response to questions about Coastal America's worth and why agencies should continue to participate in the process, Coastal America's national office conducted an examination of 20 selected Coastal America projects. The investigation was lead by an independent contractor, who interviewed project managers and examined project outputs. The report revealed five primary elements of Value Added from the partnership process, i.e.; the process improves interagency cooperation and collaboration; it improves the scale of projects; it provides for more efficient

funding; it engenders the transfer of technology; and it generates greater education and outreach activities.

Benefit to the Corps of Engineers

The author discussed the value of Coastal America to the Corps with numerous Corps employees (at the Headquarters, Division, and District levels) who are actively involved with the Coastal America process. The following is a summary of the type of specific benefits they feel the Corps derives from its association with Coastal America:

- The Corps active participation within Coastal America has increased the trust on the part of our environmental restoration project cost sharing partners because of the positive relationships developed among the other Federal, state, and local partnership agencies involved with Coastal America.
- The generation of new ideas for Corps Sections 1135, 204, and 206 and General Investigation projects from discussions among the representatives to Coastal America's regional implementation teams.
- Through its role within Coastal America, the Corps is becoming more visible as a "sister" Federal agency to other infrastructure agencies. This visibility is leading to additional "work for others"; e.g., on the Coastal America Galilee, Rhode Island, project, the Corps did nearly \$1 million worth of design work for the Federal Highway Administration.
- The Coastal America model demonstrates that government organizations that foster and implement cross-cultural solutions are constructively nurturing an inspired and largely self-rewarded workforce. This can lead to better employee recruitment and retention.
- An association with Coastal America builds greater trust and a cooperative spirit among the Federal agencies in a non-threatening, non-controversial atmosphere. The Corps can take advantage of this new environment to collaborate with others and pursue proactive strategies to address coastal problems and opportunities. This higher trust level also spills over into and provides benefits to other areas of the Corps program, which traditionally have been contentious and characterized by mistrust.
- Exposes other agencies (Federal/state/local) and non-government interests to the wide array of Corps programs, which can make a positive contribution to the Coastal America partnership. This exposure provides an opportunity to inform and educate these

interests about Corps environmental authorities to a much greater degree than any other available vehicle.

- Enables Corps personnel to become much more cognizant of other agency programs and authorities which can complement and be linked to Corps authorities to forge Coastal America projects which are better and more complete than anything the Corps can do alone.

- The education and outreach component of Coastal America (i.e., Coastal Ecosystem Learning Centers) provides an excellent outlet to the public for information about the Corps program and its environmental authorities.

- Interacting with numerous other interests enables the Corps to develop relationships with prospective non-Federal partners for our environmental program authorities.

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EDITOR'S NOTE: Bill Klesch is on loan to Coastal America from the Policy Development Branch (CECW-AA) until October 1, 1998.

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